

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

Criminal No. 2:01CR22

DAVEY CROCKETT, JR.,
Defendant.

ORDER/OPINION

On the 27th day of October 2009, came the defendant, Davey Crockett, Jr., in person and by his counsel, Harry Smith, III, and also came the United States by its Assistant United States Attorney, David Godwin, pursuant to a Petition for Warrant or Summons for Offender Under Supervision filed in this case on April 13, 2009, alleging:

- 1) Violation of Mandatory Condition No. 1: While on supervised release, the defendant shall not commit another federal, state or local crime.
- 2) Violation of Special Condition: The Defendant is restricted from consuming any alcohol.

The Court heard the testimony of United States Probation Officer John Burlas, who testified that USPO Eydie Malik is actually supervising Defendant on his supervised release, but that he is familiar with the facts and allegations contained in the Petition. Ms. Malik had filed two Petitions. One for modification on conditions on January 7, 2009, noted that in September 2008 and December 2008, Defendant was arrested for DUI. In lieu of revocation at that time, Ms. Malik recommended modification to include no use of alcohol and attending AA. The Court concurred with this recommendation.

Defendant was convicted of the two DUI's in February 2009. He was sentenced to 30 days to be served on weekends, as well as 6 months probation. In April 2009, he was arrested for permitting DUI and for Public Intoxication in Keyser, West Virginia. Ms. Malik filed the Petition

on April 13, 2009, following this arrest.

Mr. Burlas testified that Defendant absconded from his weekend incarceration. In May 2009, the States issued a capias for failure to comply with weekend sentences. Defendant was arrested in July. On August 10, 2009, a State magistrate revoked Defendant's bond and sentenced him to 30 days for the first DUI, 60 days for the second DUI, and 60 days for permitting driving while intoxicated. The public intoxication charge was dismissed pursuant to a plea agreement. Defendant was released from State custody on October 19, 2009, at which time he came into Federal Custody.

Officer Burlas had no knowledge of whether Defendant turned himself in to the State in July 2009. He also was unaware of whether Defendant was seeing a Dr. Stein for alcohol counseling or if he was attending AA. He testified he believed Defendant's State terms expired on October 19, and that there is no state time remaining. All drug tests on Defendant came back negative.

Upon consideration of all which, the Court finds the evidence is clear that Defendant was charged and arrested for permitting DUI and for Public Intoxication as a result of the incidents noted in the April 13, 2009 Petition. He pled guilty to permitting the DUI and the Public Intoxication charge was dismissed pursuant to the plea agreement. Upon consideration of all which, the Court finds there is probable cause to believe that the defendant violated his conditions of his supervised release as alleged in the Petition for Warrant or Summons for Offender Under Supervision filed April 13, 2009.

It is therefore **ORDERED** that the defendant be bound over for a full hearing before the Honorable Irene M. Keeley, United States District Judge for the Northern District of West Virginia on the violations alleged in the Petition for Warrant or Summons for Offender Under Supervision filed April 13, 2009.

Defendant is remanded to the custody of the United States Marshall pending further hearing. Defendant, through counsel, requested he be housed at the Tygart Valley Regional Jail pending further proceedings. The Court advised it would make that request, but that the placement of Defendant would be totally up to the United States Marshall.

It is so **ORDERED**.

The Clerk of the Court is directed to send a copy of this order to counsel of record.

DATED: October 28, 2009

John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE